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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/615,683 | 07/14/2000 | James A. Stockman | 4554/87215 | 6981 |

22910 7590 06/18/2003

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EXAMINER

CRONIN, STEPHEN K

| ART UNIT | PAPER NUMBER |
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3727

14

DATE MAILED: 06/18/2003

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 14

Application Number: 09/615,683
Filing Date: July 14, 2000
Appellant(s): STOCKMAN, JAMES A.

Ernest V. Linek
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 2, 2003.

(1) Real Party in Interest

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A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-23 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

| | | |
|-----------|---------|--------|
| 3,315,856 | BLACK | 4-1967 |
| 5,536,064 | MACLEAN | 7-1996 |

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| | | |
|-----------|---------|--------|
| 1,331,145 | FISHER | 2-1920 |
| 5,927,575 | GATLING | 7-1999 |

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claim 1, as discussed above, the latch, which, by disclosure, is part of the "locking assembly" is vaguely described rendering an ordinary artisan to speculate as to how this latch operates and performs. Accordingly, the latch, which is part of the locking assembly, is subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. See also claims 6 and 13.

Applicant asserts in the response that a "latch" is not recited in claim 1. Although not specifically recited, by disclosure, it is quite clear that the "locking assembly" would inherently require the latch else it would be unclear as to how the assembly may possible lock as required in the claim. If applicant continues this argument in a future response, the examiner may further present rejections under 35 U.S.C. 112, first paragraph, under lack of enablement since one having ordinary skill in the art would know how to make the claimed locking assembly to "lock" the apparatus in the position as claimed absent the latching mechanism.

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Claims 18, 22 and 23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 18, the strap merely being attached only to the sub frame is subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. A narrow written disclosure will limit claim breadth. The claims may be no broader than the supporting disclosure. The strap, by disclosure, is attached to both the frame and the sub frame. Applicant's attempt to broaden this connection after filing of the application clearly raises new matter.

Regarding claim 22, the cushion being attached merely by "side release buckles" is subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. At page 7, lines 1-3 of applicant's disclosure, applicant clearly states that the cushion is connected via a nylon strap with plastic snaps which is clearly different than merely claiming "side release buckles" which is a significant departure from the scope of the originally filed application.

Regarding claim 23, the male and female locking braces are subject matter which was not described in the specification in such a way as to reasonably convey to

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one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, as discussed above, the operation of the locking assembly is unclear rendering the claim indefinite. See also claims 6 and 13. Furthermore, in light of applicant's arguments in traversal of the first paragraph rejection, applicant states that the "latch" is not recited in the claim. If the latch is not inherently intended to be part of the broadly claimed "locking assembly," it is unclear as to how the device would possibly "lock" as required by the claim. This rejection is raised by applicant's arguments and is not considered a new grounds of rejection.

Regarding claim 18, it is unclear as to how the strap can operate as a sway brace if attached only to the sub frame.

Claims 1, 2, 4, 5, 6, 9, 10, 12, 19, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Black.

Regarding claim 1, the Black reference discloses a backpack and chair apparatus comprising a pack (7), frame (4, 6) which clearly provides rigid structure and back support when in the backpack mode as well as rigid structure and back support in the chair mode (see lead line 6 which broadly defines a back support very similar to applicant's invention), straps (25), sub-frame (10, 11), and a locking assembly (20-24) as claimed.

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Regarding claim 2, see figures 1 and 5.

Regarding claim 4, see lead line 16 which is a seat cushion which performs as claimed (see figures 1 and 5). Flaccid material inherently provides, at least to a certain extent, cushioning properties. This is well known. Applicant's claim provides no more structure than that provided in Black. In the event applicant states that the cushion includes a pad associated therewith, these claims will be properly rejected similar to that in claim 17 hereinafter.

Regarding claim 5, the cushion is "removably" attached to the sub-frame if so desired. Applicant provides no means in the claim for removing the cushion which structurally differs from the structure set forth in the Black reference whereby the cushion is clearly capable of being physically removed if so desired.

Regarding claim 19, the Black device further includes a seat braces (see members extending transversely from the lower ends of elements 4 and 5) operative as stabilizers to prevent the chair from collapsing forward (absent any directional perspective described by applicant in the claim, forward is to the left in figure 3).

Regarding claim 23, as best understood, see lead lines 9, 18, 19 (female apertures) and 17 (male pin).

Claims 3, 11, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of MacLean (064).

Regarding claim 3, although it is unclear if the pack is removable from the frame, attention is directed to the MacLean reference which discloses this well known feature (see column 4, lines 40-45; see also last four lines of the Abstract in MacLean). It would

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have been obvious, if not already to removably attach the pack in Black to the frame as, for example, illustrated in MacLean in order to increase utility of the pack by use without the frame if so desired.

Regarding claim 20, in as much structure claimed and disclosed by applicant, the attachment of the pack to the frame of the Black device as modified above is by means of a plurality of "turnbuckles."

Claims 7, 8, 13, 14, 16, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of Fisher.

Regarding claim 7, although the locking assembly does not include a jointed arm, attention is directed to the Fisher reference which discloses another chair having a sub-frame (6) and locking assembly (see lead lines 14, 16) which is a jointed swing arm (see figure 1) which includes a member (16) removably attachable to a frame (1) to lock the frame, sub-frame, and locking assembly in place to stabilize the chair. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a swing arm in connection with the element 3 in Black as, for example, illustrated in Fisher in order to more rigidly stabilize the chair when in the chair mode.

Regarding claim 14, the locking assembly comprises a plurality of jointed swing arm (see elements 20 and 21 in Black in combination with element 16 in Fisher). Alternatively, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second swing arm in connection with the leg assemblies in Black in order to enhance stability.

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Regarding claim 23, as best understood, see lead lines 9, 18, 19 (female apertures) and 17 (male pin) in Black.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of Fisher as applied above and further in view of MacLean (064).

Regarding claim 15, although it is unclear if the pack is removable from the frame, attention is directed to the MacLean reference as discussed above. It would have been obvious, if not already to removably attach the pack in Black to the frame as, for example, illustrated in MacLean in order to increase utility of the pack by use without the frame if so desired.

Claims 17, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black in view of Fisher as applied above and further in view of Gatling.

Regarding claim 17, although the cushion in Black does not include a pad removable therefrom, attention is directed to the Gatling reference which discloses another cushion having foam provided within a shell of canvas material (see column 2, lines 30 et seq.). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cushion in Black to have a foam filling as, for example, disclosed in Gatling in order to provide additional comfort to the user. Although it is unclear if the cushion in Black as modified above includes a zipper, the examiner takes Official Notice that it is very well known to provide a zipper on a cushion to provide easy access means to replace the interior padding. One very common example is sofa cushions. It further would have been obvious to provide a zipper on the

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cushion of Black as modified above in order to provide easy access to replace the padding when needed.

Regarding claim 21, although the pad in Black as modified above does not include the pad to be wedge shaped, it would have been an obvious matter of design choice to form the pad in a wedge shape, since applicant's specification is silent that this particular claimed feature solves any problems or is for any particular purpose and it would appear that a rectangular shaped pad would perform equally as well on the Black device as modified above.

Regarding claim 22, as best understood, the zippers as discussed above provide "side release buckles" wherein each of the opposing interlocking teeth provide a "buckle" as broadly claimed.

(11) Response to Argument

In response to applicants argument directed to the rejection of claims 1-23 under 35 USC 112 1st paragraph, the following is submitted:

Applicant is required under 35 USC 112 1st paragraph to provide a complete and concise explanation of his invention such that one of ordinary skill in the art, without undue experimentation is able to make and use the invention. Given the poor quality of the originally filed drawings and the vague description contained in the specification, one of ordinary skill in the art would not be able to accomplish this.

As to applicants argument that the examiner is confused by what is shown in figure 4, this is not the case. It is the latch structure itself, elements 12 and 13 which

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lack sufficient clarity in the drawings and specification to provide an understanding of what structure they comprise and how they are used.

As to applicants argument directed to claim 22, figure 4 clearly does not provide support for the limitation of "side release buckles" as set forth in the claim.

As to applicants argument directed to claim 23, the specification and drawings fail to provide support for the terminology "male and female locking braces".

In response to applicants arguments directed to the rejection of claims 1-23 under 35 USC 112 2nd paragraph, it is submitted that the limitations set forth in the claims are derived from the invention set forth in the specification. If certain structural features of the invention set forth in the specification are unclear, then the corresponding structural features set forth in the claims by default are also unclear and indefinite.

In response to applicants arguments directed to the rejection set forth under 35 USC 102 (b), the following is submitted:

Claims 1, 2, 4, 5, 6, 9, 10, 12, 19 and 23 do not specifically set forth "a chair back" as argued by applicant. Even if the claimed limitation of a "chair" as set forth in the was given the meaning argued by applicant as incorporating a "back", it is submitted that the "stool" taught by Black has a back as defined by the uppermost portions of legs 4 and 5 and the cross bar 6 which extend above seat 16. Black's stool therefore structurally meets the definition of applicants claimed "chair".

Regarding applicant's argument with respect to the rejection of the claims set forth under 35 USC 103(a), the following is submitted:

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As to applicants arguments directed to the combination of Black and MacLean in rejecting claims 3, 11 and 20, both of the above references are directed to the same field of endeavor, providing an arrangement of a back pack with a device for sitting. Black appears to show that the pack is removable from the frame and seat sub frame. However, since the specification of Black is silent on this, MacLean is relied upon for this teaching. Since the combination relied upon would provide for a pack which is removable from the frame, the limitation of "the storage pack and frame are removably attached" is met since they are removable from each other.

Regarding applicant's argument directed to the combination of Black and Fisher in rejecting claims 7, 8, 13, 14, 16 and 23 that the relied upon reference is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Fisher is clearly a collapsible chair as is the Black device and would therefore be combinable for the teaching of alternative structures for providing a collapsible chair.

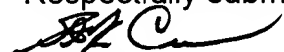
Regarding the remaining rejections under 35 USC 103(a), in rejecting claims 15, 17, 21 and 22, again applicant argues lack of motivation in light of non-analogous art. Each of the rejections have been clearly outlined above with clear motivation to combine. Applicant's mere argument that the combined references are non-analogous art without specifically directing the examiner to a specific reason why the references

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are not properly combinable clearly is not sufficient in light of the clear teachings in each of relied upon references.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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skc

June 13, 2003

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